

EXHIBIT 9

Petition to Make Special

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SERIAL NUMBER	85180324
REGISTRATION NUMBER	
ATTACHMENT(S)	
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ORIGINAL PDF FILE	Exhibit A Case 341_20111334216146.pdf
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ORIGINAL PDF FILE	Exhibit B Case 341_2011133431178.pdf
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PAYMENT SECTION	
NUMBER OF CLASSES	1
FEE PER CLASS	100
TOTAL FEES DUE	100
SIGNATURE SECTION	
DECLARATION SIGNATURE	/David J. Marr/
SIGNATORY'S NAME	David J. Marr
SIGNATORY'S POSITION	Attorney of record
DATE SIGNED	02/03/2011
SUBMISSION SIGNATURE	/David J. Marr/
SIGNATORY'S NAME	David J. Marr
SIGNATORY'S POSITION	Attorney of record
DATE SIGNED	02/03/2011
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
TEAS STAMP	USPTO/PMS-10.112.131.90-2 0110203154835854358-85180 324-20110203153439845258- CC-2188-20110203153439845 258

Petition to Make Special To the Commissioner for Trademarks:

The following is submitted for application serial number. **85180324** :

FORM INFORMATION

Original PDF file:

[Petition to Make Special Case 341_20111334141996.pdf](#)

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[Attachments-1](#)

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Original PDF file:

[Exhibit A Case 341_20111334216146.pdf](#)

Converted PDF file(s) (10 pages)

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Converted PDF file(s) (10 pages)

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[Attachments-9](#)

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FEE(S)

Fee(s) in the amount of \$100 is being submitted.

SIGNATURE(S)**Declaration Signature**

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that the facts set forth above are true; all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

Signature: /David J. Marr/ Date: 02/03/2011

Signatory's Name: David J. Marr

Signatory's Position: Attorney of record

Submission Signature

Signature: /David J. Marr/ Date: 02/03/2011

Signatory's Name: David J. Marr

Signatory's Position: Attorney of record

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the petitioner's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the petitioner in this matter: (1) the petitioner has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the petitioner has filed a power of attorney appointing him/her in this matter; or (4) the petitioner's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

RAM Sale Number: 2188

RAM Accounting Date: 02/04/2011

Serial Number: 85180324

Internet Transmission Date:

TEAS Stamp: USPTO/PMS-10.112.131.90-2011020315483585

4358-85180324-20110203153439845258-CC-21

88-20110203153439845258

IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE

Application No.: 85/180,324)
 Applicant: CTB, Inc.)
 Filed: November 18, 2010)
 Mark: Product Configuration of)
 Unique Mechanized Poultry)
 Feeder)
 Attorney Docket No. 35002/138054/341)

PETITION TO MAKE SPECIAL

Commissioner for Trademarks
 2900 Crystal Drive
 Arlington, Virginia 22202-3514

In accordance with TMEP § 1710, this Petition is accompanied by (1) the fee of \$100.00 required by 37 C.F.R. § 2.6; (2) an explanation of why special action is requested (*see Section I hereinbelow*); and (3) a statement of facts (which is supported by the Declarations of David Laurenz (*Exhibit A attached hereto*) and Theodore John Cole (*Exhibit B attached hereto*)) that shows that the special action is justified (*see Section II hereinbelow*).

I. Explanation of Why Special Action is Requested

Petitioner, CTB, Inc., is the owner of United States Trademark Application No. 85/180,324. Petitioner requests that the Trademark Office grant this Petition to make United States Trademark Application No. 85/180,324 "Special" because of the existence of actual infringement.

II. Statement of Facts

1. Petitioner filed United States Trademark Application No. 85/180,324 on November 18, 2010.

2. United States Trademark Application No. 85/180,324 consists of a three-dimensional configuration of a unique mechanized poultry feeder which includes a pan structure and a grill structure. The pan structure is red and the grill structure is gray. When viewed from any side, the perimeter of the feeder has a generally octagonal shape as it has two generally vertical sides, defined by portions of both the pan structure and the grill structure, two generally horizontal sides, one defined at the bottom of the pan structure and the other defined at the top of the grill structure, and four generally diagonal sides which interconnect the vertical sides to the horizontal

sides. Internal angles between the diagonal sides and the vertical sides are generally smaller than the internal angles between the diagonal sides and the horizontal sides.

3. United States Trademark Application No. 85/180,324 is based on Petitioner's Model C2® Plus Feeder which Petitioner has been continuously selling in the United States since at least as early as December 1, 1999. *See Declaration of David Laurenz, Exhibit A, at ¶4.*

4. Petitioner's Model C2® Plus Feeder was derived from Petitioner's Model C2® Feeder, which has since been discontinued by Petitioner. *See Declaration of Theodore John Cole, Exhibit B, at ¶3.*

5. Petitioner's Model C2® Feeder was described and illustrated in United States Patent No. 5,092,274. *See Declaration of Cole, Exhibit B, at ¶4.*

6. Petitioner's Model C2® Plus Feeder, while having structural and functional differences from Petitioner's Model C2® Feeder, also was protected by at least some of the claims of United States Patent No. 5,092,274. *See Declaration of Cole, Exhibit B, at ¶5.*

7. United States Patent No. 5,092,274 expired on October 30, 2010.

8. The overall visual appearance of the product configuration of Petitioner's Model C2® Plus Feeder has acquired distinctiveness, as purchasers of this type of poultry breeding equipment can immediately identify the source of the goods as CTB. *See Declaration of Laurenz, Exhibit A, at ¶6; see also Declaration of Cole, Exhibit B, at ¶7.*

9. In view of the foregoing, Petitioner elected to file United States Trademark Application No. 85/180,324 in order to protect the distinctive and non-functional configuration of its Model C2® Plus Feeder, which is identified in #2 above.

10. After the filing of United States Trademark Application No. 85/180,324, Petitioner became aware that one of its competitors, namely HogSlat/Georgia Poultry, had begun selling a knock-off of Petitioner's Model C2® Plus Feeder. *See Declaration of Laurenz, Exhibit A, at ¶9.*

11. Petitioner has now confirmed that HogSlat/Georgia Poultry has sold its knock-off feeders, sold under HogSlat/Georgia Poultry's "GROWER SELECT" brand, to Sanderson Farm in Georgia and Peco Farms in Mississippi. *See Declaration of Laurenz, Exhibit A, at ¶10.*

12. Petitioner has further confirmed that HogSlat/Georgia Poultry has delivered samples to Sanderson Farms in North Carolina and to Pilgrims in Georgia. *See Declaration of Laurenz, Exhibit A, at ¶11.*

13. Pilgrims in Georgia advised Petitioner that when HogSlat/Georgia Poultry delivered its sample knock-off feeder to Pilgrims, that HogSlat/Georgia Poultry claimed its feeder was identical to Petitioner's Model C2® Plus Feeder, but that its knock-off feeder would sell for half as much as Petitioner's Model C2® Plus Feeder. *See Declaration of Laurenz, Exhibit A, at ¶12.*

14. Petitioner has now obtained one of HogSlat/Georgia Poultry's knock-off feeders and has confirmed that this feeder is virtually identical to Petitioner's Model C2® Plus Feeder. *See Declaration of Laurenz, Exhibit A, at ¶13; see also Declaration of Cole, Exhibit B, at ¶10.*

15. HogSlat/Georgia Poultry's knock-off feeder is a mechanized poultry feeder which includes a pan structure and a grill structure. The pan structure is red and the grill structure is gray. When viewed from any side, the perimeter of the feeder has a generally octagonal shape as it has two generally vertical sides, defined by portions of both the pan structure and the grill structure, two generally horizontal sides, one defined at the bottom of the pan structure and the other defined at the top of the grill structure, and four generally diagonal sides which interconnect the vertical sides to the horizontal sides. Internal angles between the diagonal sides and the vertical sides are generally smaller than the internal angles between the diagonal sides and the horizontal sides. *See Declaration of Laurenz, Exhibit A, at ¶13; see also Declaration of Cole, Exhibit B, at ¶10.*

16. Petitioner is of the opinion that there is a likelihood of confusion as to the source (between CTB and HogSlat/Georgia Poultry) of HogSlat/Georgia Poultry's knock-off feeders such that actual infringement exists. *See Declaration of Laurenz, Exhibit A, at ¶15; see also Declaration of Cole, Exhibit B, at ¶13.*

In view of the foregoing, Petitioner respectfully requests that its Petition to Make Special be granted such that the initial examination of Petitioner's application be advanced out of its regular order.

Respectfully submitted,

CTB, Inc.

By: 

David J. Marr
Attorney for Petitioner

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F.: (312) 985-5958
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EXHIBIT A

**IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE**

Application No.: 85/180,324)
 Applicant: CTB, Inc.)
 Filed: November 18, 2010)
 Mark: Product Configuration of)
 Unique Mechanized Poultry)
 Feeder)
 Attorney Docket No.: 35002/138054/341)

**DECLARATION OF DAVID LAURENZ
IN SUPPORT OF PETITION TO MAKE SPECIAL**

Commissioner for Trademarks

Sir:

I, David Laurenz, declare and say:

1. I am a citizen of the United States of America and I reside at 1449 Mount Crawford Avenue, Bridgewater, Virginia 22812.
2. I am the Sales and Marketing Manager of CTB, Inc.
3. A product brochure for CTB's Model C2® Plus Feeder is attached hereto as Exhibit 1.
4. As CTB's Model C2® Plus Feeder has been continuously sold in the United States for over the last ten years, the relevant public, i.e., individuals in the agricultural industry, have come to associate the distinctive product configuration of the Model C2® Plus Feeder as being one of CTB's feeders.
5. Based on my job, I am intimately familiar with the product configuration of CTB's Model C2® Plus Feeder and how individuals in the agricultural industry associate the Model C2® Plus Feeder as being one of CTB's feeders based on the Model C2® Plus Feeder's distinctive product configuration.
6. I, as well as others, upon entering a poultry house, and even at a distance, can immediately determine whether the poultry house uses CTB's Model C2® Plus Feeders because

of its distinctive and non-functional product configuration, namely that it has a sort of “squished” or “flattened” appearance compared to other feeders sold by CTB and by CTB’s competitors.

7. This “squished” or “flattened” appearance is embodied in the description of the mark of CTB’s above-identified trademark application, namely that the Model C2® Plus Feeder is a unique mechanized poultry feeder which includes a pan structure and a grill structure. When viewed from any side, the perimeter of the feeder has a generally octagonal shape as it has two generally vertical sides, defined by portions of both the pan structure and the grill structure, two generally horizontal sides, one defined at the bottom of the pan structure and the other defined at the top of the grill structure, and four generally diagonal sides which interconnect the vertical sides to the horizontal sides. Internal angles between the diagonal sides and the vertical sides are generally smaller than the internal angles between the diagonal sides and the horizontal sides.

8. The Model C2® Plus Feeder having a red pan structure and a gray grill structure, as described and claimed as a feature of CTB’s above-identified trademark application, in conjunction with the foregoing distinctive, structural features, provides a further distinctive feature of CTB’s Model C2® Plus Feeder.

9. Recently, I was advised that HogSlat/Georgia Poultry had begun selling a knock-off of CTB’s Model C2® Plus Feeder.

10. I have personally confirmed that HogSlat/Georgia Poultry sold its knock-off feeders, sold under HogSlat/Georgia Poultry’s “GROWER SELECT” brand, to Sanderson Farm in Georgia and Peco Farms in Mississippi.

11. I have further personally confirmed that HogSlat/Georgia Poultry has delivered samples of its knock-off feeders to Sanderson Farms in North Carolina and to Pilgrims in Georgia.

12. I have further been advised by an individual at Pilgrims in Georgia that when HogSlat/Georgia Poultry delivered its sample knock-off feeders to Pilgrims, that HogSlat/Georgia claimed its feeder was identical to CTB’s Model C2® Plus Feeder and that it would sell its knock-off feeders for half as much as CTB sells its Model C2® Plus Feeder.

13. I have obtained one of HogSlat/Georgia Poultry’s knock-off feeders and, in my opinion, this feeder is virtually identical to CTB’s Model C2® Plus Feeder as it is a mechanized poultry feeder which includes a pan structure and a grill structure; the pan structure is red and the grill structure is gray; when viewed from any side, the perimeter of the feeder has a generally octagonal shape as it has two generally vertical sides, defined by portions of both the pan structure and the grill structure, two generally horizontal sides, one defined at the bottom of the pan structure and the other defined at the top of the grill structure, and four generally diagonal sides which interconnect the vertical sides to the horizontal sides. Internal angles between the diagonal sides and the vertical sides are generally smaller than the internal angles between the diagonal sides and the horizontal sides.

14. Pictures of HogSlat/Georgia Poultry's knock-off feeder are attached hereto as Exhibit 2.

15. In my opinion, due to the distinctive product configuration of CTB's Model C2® Plus Feeders, there is likely to be confusion as to the source (i.e., between CTB and HogSlat/Georgia Poultry) of HogSlat/Georgia Poultry's knock-off feeders.

16. The undersigned declares further that all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patents issuing thereon.

Date:

1/28/11


David Laurenz

EXHIBIT 1

MODEL C2® PLUS Broiler Feeders

The Broiler Feeder That
Promotes Better Feed Conversion



Let's grow together.

Gets Birds Off to a Good Start from Day One

- **Chick-friendly** 14-spoke grill design lets birds exit pans easily.
- **Shallow pan option** reduces the need for feed trays and extra labor when starting birds.
- **Optional feed windows** fill pans high with feed to attract chicks.
- **All-plastic construction** with ultraviolet protection and reinforced eating and cone wear areas.
- **Extended fin model** helps ensure feed delivery by improving feed flow for harder flowing feed.



Chore-Time's MODEL C2® PLUS Broiler Feeding System gets birds off to a good start, minimizes wasted feed, and provides birds with consistent access to fresh feed.



Pan hangs for cleaning.



Easy-To-Read Feed Level Settings

- Easy to adjust for flooding or a lower feed level as birds grow.
- Optional slide shut-off also available.








Keeps Birds Growing with Top Feed Conversion

- Feed-saving features include Chore-Time's "V"-shaped pan bottom design, double pan lip and anti-rake fins.
- Extended fin model features ½-inch (13-mm) longer anti-rake fins to keep the cone off the bottom of the pan – permits more feed in pan when windows are closed with pan on the floor.
- Designed for management simplicity.



Find your
certified
TRUE RED®
distributor
in our
on-line
distributor
finder to
get more
information.

MODEL C2® PLUS Feeder Specifications

			
	Model C2 Plus SHL Shallow Pan	Model C2 Plus STD Standard Pan	Model C2 Plus EXT Extended Fin
Pan Shape			
Pan Depth	2-1/2 inches (64 mm)	3 inches (76 mm)	3 inches (76 mm)
Window Options	Window or Non-Window		Window Only
Extended Fins	No		Yes
Advantages of This Model	Shorter pan height results in easier access for chicks and small birds.	Proven, reliable performance from the feeder that has grown to be the industry standard.	Fixed feed height at bottom helps maintain feed flow at all times regardless of pan height or litter level; more interior space improves flow for harder flowing feed.

Other Feeder Features

- 1/3 or 1/2 HP 348 RPM power unit.
- 230 volt 50/60 Hz 1 or 3 phase power.
- Removable top option and slide shut-off available for all models.

Chore-Time's
MODEL C2® PLUS
Feeder is shown
with removable
top option.



Let's grow together.

Feeding | Drinking | Controls | Ventilation | Heating | Nests | Feed Storage

Find your certified TRUE RED® distributor in our on-line distributor finder.

www.choretimepoultry.com

Chore-Time Poultry Production Systems
Chore-Time Brock International
Divisions of CTB, Inc.

Phone: 574.658.4101 or +1.574.658.9323 (International)
E-mail: poultry@choretime.com or world@ctbworld.com

CT-2430/1210

EXHIBIT 2





EXHIBIT B

IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE

Application No.: 85/180,324)
 Applicant: CTB, Inc.)
 Filed: November 18, 2010)
 Mark: Product Configuration of)
 Unique Mechanized Poultry)
 Feeder)
 Attorney Docket No.: 35002/138054/341)

**DECLARATION OF THEODORE JOHN COLE
IN SUPPORT OF PETITION TO MAKE SPECIAL**

Commissioner for Trademarks

Sir:

I, Theodore John Cole, declare and say:

1. I am a citizen of the United States of America and I reside at 12971 N. Camelot Drive, Milford, Indiana 46542.
2. I am a Project Engineer at CTB, Inc.
3. CTB's Model C2® Plus Feeder was derived from CTB's Model C2® Feeder, which CTB no longer sells.
4. CTB's Model C2® Feeder was described and illustrated in United States Patent No. 5,092,274.
5. CTB's Model C2® Plus Feeder, while having structural and functional differences from CTB's Model C2® Feeder, also was protected by at least some of the claims of United States Patent No. 5,092,274.
6. Based on my job, I am intimately familiar with the product configuration of CTB's Model C2® Plus Feeder.
7. Upon seeing a poultry feeder, even at a distance, I can immediately determine whether the poultry feeder is one of CTB's Model C2® Plus Feeders because of its distinctive

and non-functional product configuration, namely that it has a sort of “squished” or “flattened” appearance compared to other feeders sold by CTB and by CTB’s competitors.

8. This “squished” or “flattened” appearance is embodied in the description of the mark of CTB’s above-identified trademark application, namely that the Model C2® Plus Feeder is a unique mechanized poultry feeder which includes a pan structure and a grill structure. When viewed from any side, the perimeter of the feeder has a generally octagonal shape as it has two generally vertical sides, defined by portions of both the pan structure and the grill structure, two generally horizontal sides, one defined at the bottom of the pan structure and the other defined at the top of the grill structure, and four generally diagonal sides which interconnect the vertical sides to the horizontal sides. Internal angles between the diagonal sides and the vertical sides are generally smaller than the internal angles between the diagonal sides and the horizontal sides.

9. The Model C2® Plus Feeder having a red pan structure and a gray grill structure, as described and claimed as a feature of CTB’s above-identified trademark application, in conjunction with the foregoing distinctive, structural features, provides a further distinctive feature of CTB’s Model C2® Plus Feeder.

10. I have been provided with one of HogSlat/Georgia Poultry’s knock-off feeders and have conducted a thorough analysis of comparing this knock-off feeder to one of CTB’s Model C2® Plus Feeder and, in my opinion, the two feeders are virtually identical as both feeders are mechanized poultry feeders which include pan structures and grill structures; the pan structures are red and the grill structures are gray; when viewed from any side, the perimeter of the feeders have a generally octagonal shape as they have two generally vertical sides, defined by portions of both the pan structures and the grill structures, two generally horizontal sides, one defined at the bottom of the pan structures and the other defined at the top of the grill structures, and four generally diagonal sides which interconnect the vertical sides to the horizontal sides. Internal angles between the diagonal sides and the vertical sides are generally smaller than the internal angles between the diagonal sides and the horizontal sides.

11. A product brochure for CTB’s Model C2® Plus Feeder is attached hereto as Exhibit 1.

12. Pictures of HogSlat/Georgia Poultry’s knock-off feeder are attached hereto as Exhibit 2.

13. In my opinion, due to the distinctive product configuration of CTB’s Model C2® Plus Feeders, there is likely to be confusion as to the source (i.e., between CTB and HogSlat/Georgia Poultry) of HogSlat/Georgia Poultry’s knock-off feeders.

14. The undersigned declares further that all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patents issuing thereon.

Date:

01/26/11



Theodore John Cole

EXHIBIT 1

MODEL C2® PLUS Broiler Feeders

The Broiler Feeder That
Promotes Better Feed Conversion



Let's grow together.

Gets Birds Off to a Good Start from Day One

- **Chick-friendly** 14-spoke grill design lets birds exit pans easily.
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- **Optional feed windows** fill pans high with feed to attract chicks.
- **All-plastic construction** with ultraviolet protection and reinforced eating and cone wear areas.
- **Extended fin model** helps ensure feed delivery by improving feed flow for harder flowing feed.



Chore-Time's MODEL C2® PLUS Broiler Feeding System gets birds off to a good start, minimizes wasted feed, and provides birds with consistent access to fresh feed.



Pan hangs for cleaning.



Easy-To-Read Feed Level Settings








- Easy to adjust for flooding or a lower feed level as birds grow.
- Optional slide shut-off also available.

Keeps Birds Growing with Top Feed Conversion

- Feed-saving features include Chore-Time's "V"-shaped pan bottom design, double pan lip and anti-rake fins.
- Extended fin model features ½-inch (13-mm) longer anti-rake fins to keep the cone off the bottom of the pan – permits more feed in pan when windows are closed with pan on the floor.
- Designed for management simplicity.



MODEL C2® PLUS Feeder Specifications

			
	Model C2 Plus SHL Shallow Pan	Model C2 Plus STD Standard Pan	Model C2 Plus EXT Extended Fin
Pan Shape			
Pan Depth	2-1/2 inches (64 mm)	3 inches (76 mm)	3 inches (76 mm)
Window Options	Window or Non-Window		Window Only
Extended Fins	No		Yes
Advantages of This Model	Shorter pan height results in easier access for chicks and small birds.	Proven, reliable performance from the feeder that has grown to be the industry standard.	Fixed feed height at bottom helps maintain feed flow at all times regardless of pan height or litter level; more interior space improves flow for harder flowing feed.

Other Feeder Features

- 1/3 or 1/2 HP 348 RPM power unit.
- 230 volt 50/60 Hz 1 or 3 phase power.
- Removable top option and slide shut-off available for all models.

*Chore-Time's
MODEL C2® PLUS
Feeder is shown
with removable
top option.*



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E-mail: poultry@choretime.com or world@ctbworld.com

CT-2430/1210

EXHIBIT 2



